SUPREME COURT, U. S.

Supreme Court, U.
FILED
MAR 15 1976
MICHAEL RODAK, JR., C

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1321

WILLIAM E. CRAWFORD, and FRANCES B. CRAWFORD, his wife, *Petitioners,*

vs.

SECURITY NATIONAL BANK, a corporation, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal of the State of California
First Appellate District
Division Two

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
1203 - 12th Street,
Oakland, California 94607,
Telephone: (415) 893-8457,
Petitioners in Propria Persona.

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Petitioners William E. Crawford and Frances B. Crawford, his wife, pray that a writ of certiorari issue to review the judgment of the Court of Appeal, First Appellate District, Division Two.

OPINION BELOW

The judgment of the Appellate Court for Respondent is set forth in Appendix E.

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The order of the California Supreme Court denying the Petition for Hearing (Security National Bank, a corporation v. William E. Crawford and Frances B. Crawford, his wife, 1 Civ. No. 35893) is set forth in Appendix F.

JURISDICTION

The order of the California Supreme Court denying Petitioners' Petition for Hearing was entered January 14, 1976.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1257(3).

Appendices A, B, C and D expand Jurisdiction more fully.

QUESTION PRESENTED

Is it not an accepted principle of judicial review that "courts will limit the operation of a statute by construction or severance of the language to avoid unconstitutionality, or, where unconstitutionality cannot reasonably be avoided, will not uphold a statute merely because a particular factual situation to which it is applicable may not involve the objections giving rise to its invalidity?

STATEMENT OF FACTS

Petitioners believe that the statement of facts as stated in Respondent's brief, 1 Civil No. 35893 in the

Court of Appeal of the State of California, succinctly contains all the facts in this case and is reproduced in full as follows:

> "Since Appellants have not provided a statement of the essential facts, respondents are providing the following to assist the Court.
>
> This action was commenced with the filing on February 7, 1968 of Complaint in Claim and Delivery and for Monies (CT 1).
>
> Plaintiff followed the then applicable claim and delivery procedure (C.C.P. Sec. 509-521, Vol. 15 West's Code of Civil Procedure (1954)), by delivering a declaration to the Sheriff of Alameda County (corrected CT 29) (former C.C.P. Sec. 510) together with endorsement to the Sheriff of Alameda County (CT 29) (former C.C.P. Sec. 511) and accompanied by an undertaking (corrected CT 5A) (former C.C.P. Sec. 512). The claim and delivery legislation was repealed by Stats. and added to the C.C.P. 1972 Ch. 855 and Stats. 1973-74 Ch. 526. This was contained in part in Assembly Bill 541 referred to in Appellants' Opening Brief in the authorities cited, lines 15-19.
>
> The Sheriff took possession of the described personal property on February 9, 1968 and delivered it to the representative of plaintiff, Security National Bank on February 15, 1968. See Return on Replevin (Corrected CT 31)."

ARGUMENT

Respondent and lower Court fail to take notice that the taking of defendant's possession was performed

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by Sheriff acting on a "non-judicial order." At this particular point in time, defendant's Constitutional guarantees of "due Process" were violated—seizure of his properties also involved not only violation of 4th Amendment but also 5th and 14th Amendments. Defendant believes that Constitutional Amendments supersede any State statute or Case decision.

It was wrong for lower Court (see Appendix E, page two, 2d paragraph) to state: "Appellants' contention was made to this court in *EAC Credit Corp. v. Bass* (1972) 21 Cal.App.3d 645, where a claim and delivery executed in April, 1969 was urged to be retroactively void under *Blair,* supra. We stated, at page 655, '*Blair v. Pitchess,* supra, was not retroactive and is to be applied prospectively.'" Defendant interpreted this ruling as a "finality" as to interpretation of his Constitutional rights. It is to be noted that "A state may choose the procedure it deems appropriate for the vindication of Federal rights, but where state court of last resort closes the door to any consideration of a claim of denial of a Federal right, it is not simply a question of state procedure." *Young v. Hagen* (Ill. 1949) 69 S.Ct. 1073, 337 U.S. 235, 93 L.Ed. 1333.

Defendants believe that decisions of State Supreme Court based on local laws not involving constitutional questions are not reviewable in the federal Supreme Court. *Hibben v. Smith* (Ind. 1903) 24 S.Ct. 88.

Blair v. Pitchess is an appellate decision by the Southern Cal. Appellate Court. The Appellate Court in San Francisco is in disagreement with the Los

Angeles Appellate Court, e.g., *EAC Credit Corp. v. Bass* in respect to *Blair v. Pitchess,* whereby a federal question has been decided by the Northern Appellate Court in a way in conflict with applicable decisions of the Supreme Court of the United States.

Respondent writes on page 8 of its brief as follows:

> "The Modern Management Method partial retroactivity is of no assistance to appellants. To be applicable at all, appellants would have been required to challenge the claim and delivery at the time the sheriff took possession of the personal property."

A more favorable position is taken towards appellants in response to the above untenable position by respondent. *Blair v. Pitchess,* 5 C.3d 258, 96 Cal.Rptr. 42, 486 P.2d 1242, under headnote No. 18, states as follows:

> "Searches #22—Without Warrant—Voluntary Submission — Waiver of Fourth Amendment Rights. '*An occupant's acquiesence to an intrusion of his premises on being confronted by the intimidating presence of an officer of the law and the legal process that appears to justify the intrusion in enforcing the claim and delivery law does not operate as a voluntary waiver of the 4th Amendment rights.*'"

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CONCLUSION

It was wrong for court to issue a final judgment on Appellants since it didn't take any consideration of Constitutional rights of Appellants when Respondent ordered Sheriff with a "non-judicial order" to take Appellants' possessions, thereby denying them "due process" and "unlawful seizures" and thus violated Appellants 4th, 5th and 14th Constitutional rights.

Dated, Oakland, California,
March 10, 1976.

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
Petitioners in Propria Persona.

(Appendices Follow)

Appendices

Appendix A

(Reproduced in full from page two of Opening Brief)

SUMMARY OF MATERIAL FACTS

The complaint is one of Claim and Delivery whereby sheriff deputies have wrongfully delivered properties to Plaintiff/respondent. Defendant/appellant takes decisive issue with that portion of judgment prepared by Plaintiff for judge's signature, which reads as follows (CT page 26, lines 26 through 31):

> "IT IS ORDERED, ADJUDGED AND DECREED:
>
> 1. The request of plaintiff SECURITY NATIONAL BANK that its complaint be dismissed as to the remaining issues of money damages is granted and plaintiff's complaint is ordered dismissed as to all remaining issues."

Of utmost concern to defendant/appellant is the issue of the legality of plaintiff/respondent's order to the sheriff (lines 9 through 14) under heading of Declaration in Claim and Delivery, which reads as follows:

> TO: MARSHAL OR SHERIFF OF ALAMEDA COUNTY:
>
> YOU ARE INSTRUCTED TO TAKE THE PERSONAL PROPERTY FROM THE DEFENDANTS WILLIAM E. CRAWFORD AND FRANCES B. CRAWFORD, 4240 REDDING STREET, OAKLAND, CALIFORNIA, AND TURN OVER POSSESSION OF SAID PROPERTY TO STEVE J. DAVIS, JR., PLAINTIFF'S APPOINTEE ON PREMISES.
>
> DATED: FEBRUARY 7, 1968.
>
> BARRY R. GROSS"

It is to be noted that the above order was signed by plaintiff's attorney and not by any order from a judge to the sheriff.

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Appendix B

(Reproduced in full from page three of Appellant's Opening Brief)

ISSUES RAISED

Violation of Rules of Adjective Law

A judgment is irregular where its rendition is contrary to the course and practice of the courts (*Pruit v. Taylor,* 247 N.C. 380, 100 S.E.2d 841)—that is, where proper rules of practice have not been followed, or where some necessary act has been omitted (*Gunn v. Plant,* 94 L.Ed. 304; *Sache v. Wallace,* 101 Minn. 169, 112 N.W. 386), or has been done in an improper manner, *Sache v. Wallace,* supra.

Constitutional Guarantees

1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Fourth Amendment).

2. No person shall be deprived of life, liberty, or property, without due process of law. (Fifth Amendment).

3. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its juris-

diction the equal protection of the laws. (Fourteenth Amendment).

4. The validity of a judgment may be affected by a failure to give the constitutionally required due notice and opportunity to be heard. (*Hanson v. Denekla,* 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228; *Sabariego v. Maverick,* 124 U.S. 261, 31 L.Ed. 430, 8 S.Ct. 461).

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Appendix C

(Reproduced in full from page four of Appellant's Opening Brief)

ARGUMENT

Plaintiff, in writing Judgment for Court, spends considerable effort in painting previous judgment positions which are irrevelant in this instance since matter before court was defendant's motion to advance case for trial (of complaint in Claim and Delivery), and trial date of June 5, 1974 was set by County Clerk. (Page 2 of Judgment, lines 20, 23, 22 which is page 30 of Clerk's Transcript). Fee for Jury Trial had already been deposited by defendant and still remains on deposit in court. In this posture plaintiff's motion to withdraw its complaint was made and accepted by the court. However, the remaining issues as to right of plaintiff to keep possessions of defendants remain unsettled and still is at issue.

Defendant interpreted the court as saying that a plaintiff had a right to withdraw its complaint at anytime before trial. Defendant believes this to be true except in instances where plaintiff has unlawfully gained possession of defendant's possessions hereforth its non-judicial order to the sheriff which sheriff unlawfully executed, and which plaintiff is still in possession. This is the entire "crux" of this matter. Defendant believes that this "remaining issue" cannot be that easily dismissed, nor can a court give "credence" to plaintiff's non-judicial acts—Order to Sheriff.

Defendant bases his arguments around two landmark cases, both being Californian:

1) *Blair v. Pitchess*, 5 C.3d 258; 96 Cal.Rptr. 42, 486 P.2d 1242.

2) *Randone v. Appellate Department*, 5 C.3d 536; 96 Cal.Rptr. 709, 488 P.2d 13.

The California Legislature Repealed the original Claim and Delivery Act by passing a New Claim and Delivery Act on 14 Aug. 72. This act resolves the "crux of the matter" in defendant's case—in that prior to taking of possession that there be both due process and order to sheriff be judicial in nature.

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Appendix D

(Reproduced in full from page six of Appellant's Opening Brief)

CONCLUSION

Appellant believes that he has faithfully presented his case and prays that the court reverses judgment on this case in that there was violation of rules of adjective law and that defendant's Constitutional guarantees were violated in Constitutional Amendments Four, Five and Fourteenth Amendments. Hence, the validity of a judgment may be affected by a failure to give the constitutionally require "due notice" and an opportunity to be heard, (*Renaud v. Abbott,* 116 U.S. 277, 29 L.Ed. 629, 6 S. Ct. 1194).

William E. Crawford
Frances B. Crawford

Appendix E

(NOT TO BE PUBLISHED IN OFFICIAL REPORTS)

In The Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 35,893
(Sup. Ct. No. 376 939)

Security National Bank,
a corporation,
Plaintiff and Respondent,
vs.
William E. Crawford and
Frances B. Crawford,
Defendants and Appellants.

[Filed Nov. 17, 1975]

THE COURT:*

This is an appeal from a judgment of dismissal of plaintiff and respondent's remaining issues in his complaint in claim and delivery and defendants and appellants' cross-complaints and counterclaims. The sole issue before us on appeal is whether the decision in *Blair v. Pitchess* (1971) 5 Cal.3d 258, should be applied retroactively to void an execution of claim and delivery process in 1968.

The relevant facts may be briefly stated. Appellants and respondent's assignor, Abbey Rents, entered

*Before Taylor, P.J., Kane, J., and Rouse, J.

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into a conditional sales contract in June 1965 for the purchase of numerous items of eqiupment to be used in appellants' convalescent hospital. Following appellants' default, respondent instituted claim and delivery proceedings in February 1968 and repossessed the property. On July 1, 1971, the California Supreme Court declared unconstitutional the claim and delivery law (Code Civ. Proc., §§ 509-521) in *Blair v. Pitchess,* supra.

Appellants' contention was made to this court in *EAC Credit Corp. v. Bass* (1971) 21 Cal.App.3d 645, where a claim and delivery, executed in April 1969, was urged to be retroactively void under *Blair,* supra. We stated, at page 655: "*Blair v. Pitchess,* supra, was not retroactive and is to be applied prospectively.

"It enjoined the prospective application of the claim and delivery procedure [citation] in effect since 1872. [Citations.]"

Appellants' additional contention that the enactment of interim claim and delivery legislation in 1972 (Code Civ. Proc., §§ 509-521 [West Supp. 1974]) operates retroactively also fails. Our review of this legislation, as well as of the subsequent provisions (Code Civ. Proc., §§ 511.010-516.050 [effective July 1, 1974]) does not reveal a legislative intent that these provisions should apply retroactively. It is well settled that unless the Legislature clearly intends that legislation is to be given retroactive effect, it will be construed to apply prospectively (In re Rauer's Collection Co. (1948) 87 Cal.App.2d 248, 253).

Judgment affirmed.

Appendix F

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

Jan. 14, 1978

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 1 Civ. 35,893

Security National Bank

vs.

Crawford

Respectfully,
G. E. Bishel
Clerk

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court
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OCTOBER TERM, 1975

No. 75-1321

WILLIAM E. CRAWFORD, and FRANCES B. CRAWFORD, his wife,
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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal of the State of California
First Appellate District
Division Two

JAMES E. COX,
CHARLES L. HEMMINGS,
COX, CUMMINS & LAMPHERE,
A PROFESSIONAL CORPORATION,
Court and Mellus Streets,
P. O. Box 111,
Martinez, California 94553,
Telephone: (415) 228-7300,
Attorneys for Respondent.

PERNAU-WALSH PRINTING CO. - 582 MISSION STREET - SAN FRANCISCO, CA 94105

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QUESTION PRESENTED

We believe that a more accurate statement of the question raised by Petitioners is:

A State Appellate Court declares state legislation dealing with replevin (claim and delivery) to be unconstitutional because of lack of notice and civil search and seizure requirements. Is there any Constitutional requirement that the decision be retroactive?

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JURISDICTION

We agree with Petitioners that under 28 U.S.C.A. Section 1257(3) a petition for a writ of certiorari lies when the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution of the United States.

The Opinion of the Court of Appeal, First Appellate District, filed November 17, 1975, (Petitioner's Appendix "E") represents the final Judgment of the highest Court of California in which a decision could be had. As indicated in Petitioner's Appendix "F", the California Supreme Court has exercised its discretion and denied a hearing.

THE FORMER CALIFORNIA LAW

Since 1872, California Legislation has provided an auxiliary remedy in an action seeking recovery of personal property. The auxiliary or provisional remedy of claim and delivery accomplishes the same result as the common law form of action of replevin.

> *Faulkner v. First National Bank* (1900) 62 Pac. 463, 130 Cal. 258, 263-4.

The former claim and delivery law is described by the California Supreme Court in *Blair v. Pitchess* (1971) 5 Cal.3d 258, 264-5; 96 Cal.Rptr. 42, 486 Pac. 2d 1242, as follows (Section references are to the California Code of Civil Procedure):

> Originally enacted in 1872, the claim and delivery law establishes a procedure by which the "plain-

tiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer" require the sheriff, constable or marshal of a county to take the property from the defendant. (§§ 509, 511.) To initiate the procedure, the plaintiff must file his complaint, obtain the issuance of a summons, and file an affidavit stating that he owns or is entitled to possession of the property, that the defendant is wrongfully detaining the property and that the property has not been taken for a tax, assessment or fine, or been seized under an attachment or execution. The affidavit must also set forth the alleged cause of the wrongful detention of the property and the actual value of the property. (§ 510.) In addition, the plaintiff must file an undertaking of two or more sufficient sureties for double the value of the property. (§ 512.)

The defendant may except to the plaintiff's sureties (§ 513) or require return of the property by filing an undertaking similar to that required of the plaintiff. (§§ 514, 515.) After the sheriff seizes the property, he must deliver it to the plaintiff upon payment of his fees and necessary expenses (§§ 518, 521), and he must file the undertaking, affidavit and other relevant documents with the clerk of the court in which the action is pending. (§ 520.)

If the plaintiff has secured possession of the personal property through seizure by the Sheriff, the defendant, by his (verified) answer may claim a return thereof. California Code of Civil Procedure Section 627. It is to be noted that Petitioners here, as Defendants below, at no time filed an answer spe-

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cifically claiming a return to them of the personal property taken into possession by the Sheriff through the claim and delivery procedure.

THE COURT OF APPEAL CORRECTLY DECIDED THAT THE DECLARATION OF UNCONSTITUTIONALITY WAS NOT TO BE APPLIED RETROACTIVELY

Blair v. Pitchess, supra (1971) 5 Cal.3d 258, 264-5, 96 Cal.Rptr. 42, 486 Pac.2d 1242, was a taxpayers action against county officers to obtain an injunction restraining the illegal expenditure of public funds in executing the claim and delivery legislation. Following *Sniadach v. Family Finance Corp.* (1969) 395 U.S. 337 and a number of Fourth Amendment cases, the California Supreme Court held that the existing claim and delivery legislation violated the Fourth Amendment, the Fifth Amendment, the Fourteenth Amendment and California Constitution Article I, Section 13.

The Constitutional questions now asserted by Petitioners were not raised in the Trial Court.

RESPONDENT'S STATEMENT CONCERNING MATERIAL FACTS

The June 10, 1974, Judgment of the Trial Court from which Petitioner's Appeal to the Court of Appeal was taken sets forth the history of this case as follows:

> This matter appeared on the calendar of the Presiding Judge, June 5, 1974 having been set as the time for trial of the above-entitled action.

CHARLES L. HEMMINGS of COX, CUMMINS & LAMPHERE, A Professional Corporation, appeared for plaintiff, SECURITY NATIONAL BANK. Defendant WILLIAM E. CRAWFORD, in propria persona, appeared for himself and defendant FRANCES B. CRAWFORD was also present in the Courtroom.

Mr. Hemmings asked leave of Court to dismiss the remaining issues concerning money damages prayed for in plaintiff's Complaint and to file a Request for Dismissal. The Court granted the request and ordered plaintiff's Complaint dismissed.

It appears to the Court that plaintiff made a motion for judgment on the pleadings and the motion was granted by a judgment dated January 15, 1970 and signed and filed January 26, 1970. An appeal from the judgment was filed by the defendants. The Court of Appeal on May 24, 1971 in 1/Civil 28406 reversed the judgment on the pleadings and allowed defendants leave to amend their pleadings.

It further appears that in August, 1971, defendants filed an amended answer which included two separate counter-claims, along with a cross-complaint for abuse of process and a cross-complaint for unfair competitive business tactics.

It further appears that the plaintiff SECURITY NATIONAL BANK filed a demurrer to these cross-complaints and counter-claims. On November 9, 1971 a judgment of dismissal was signed and filed with respect to the counter-claims and cross-complaints above-referred to.

An appeal was taken from the judgment of dismissal and on December 13, 1972 the Court

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of Appeal in 1/Civil 31227 dismissed the appeal on the grounds that the complaint was still pending and therefore the judgment of dismissal dated November 9, 1971 was not a final judgment from which an appeal would lie.

The defendants made a motion to advance the case for trial, which was granted, and the trial date June 5, 1974 was set by the County Clerk.

In this posture of the action, the counter-claims and cross-complaints could not be tried. As a recital of the foregoing proceedings in this action, and good cause appearing,

It Is Ordered, Adjudged and Decreed:

1. The request of plaintiff SECURITY NATIONAL BANK that its complaint be dismissed as to the remaining issue of money damages is granted and plaintiff's complaint is ordered dismissed as to all remaining issues.

2. The judgment of dismissal filed November 9, 1971 as to the defendants' two counter-claims and two cross-complaints is and is adjudged to be the judgment of the Court.

(Clerk's Transcript, pp. 25-27).

Petitioners were present in the Trial Court. They did not object to the requested dismissal of the remaining causes of action. A copy of the proposed Judgment was mailed to Petitioners on June 5, 1974, and again Petitioners did not object.

The same Second Division of the First District Court of Appeal which decided the present case, decided *EAC Credit Corp. v. Bass* (1971) 21 Cal.App. 3d 645, 98 Cal.Rptr. 681 and said:

Upon argument before us, Harry R. Johnson, the third party claimant, first suggested that the holding of *Blair v. Pitchess,* 5 Cal.3d 258 [96 Cal.Rptr. 42, 486 P.2d 1242], on July 1, 1971 retroactively condemned the California claim and delivery procedure. However, in the court below such contention was not raised. The question of title was fully and fairly litigated there and before this court. Pursuant to the judgment below, both parties took possession of such items then held to be theirs.

Blair v. Pitchess, supra, was not retroactive and is to be applied prospectively.

It enjoined the prospective application of the claim and delivery procedures (Code Civ. Proc., §§ 509-521) in effect since 1872. (*Forster Shipbldg. Co. v. County of L. A.* (1960) 54 Cal.2d 450, 459 [6 Cal.Rptr. 24, 353 P.2d 736]; *Larez v. Shannon* (1970) 2 Cal.3d 813, 816 [87 Cal.Rptr. 871, 471 P.2d 519].)

A holding of retroactivity of the statute would have upset every claim and delivery for many years prior to the *Blair v. Pitchess* decision in 1971.

The California legislature took heed of the decision in *Blair v. Pitchess, supra.*

By Stats 1972, Chap. 855, § 1, Code of Civil Procedure §§ 509-521 were repealed. Newer legislation covering claim and delivery was adopted by Stats 1972, Chap. 855, § 2.

This newer legislation was repealed by Stats 1973, Chap. 526, § 1. The present claim and delivery legis-

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lation was added by Stats 1973, Chap. 526, § 2, prospectively operative July 1, 1974.

The Petition for Writ of Certiorari should be denied.

Dated, Martinez, California,
April 6, 1976.

Respectfully submitted,

JAMES E. COX,
CHARLES L. HEMMINGS,
COX, CUMMINS & LAMPHERE,
A PROFESSIONAL CORPORATION,
Attorneys for Respondent.

Supreme Court, U. S.
FILED
MAY 25 1976

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1203 - 12th Street,
Oakland, California 94607,
Telephone: (415) 893-8457,
Petitioners in Propria Persona.

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PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI

Petitioners believe that Respondent's act of requesting Dismissal of their Complaint in a Claim & Delivery procedure PRIOR to the time the Answer to the Complaint could be heard, is a major intervening circumstance (e.g., *Sanitary Refrigerator Co. v. Winters,* 280 U.S. 30, 34, footnote 1; *Massey v. United States,* 291 U.S. 608), of such importance as to alter Appellate Court's position that Claim & De-

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livery procedure should be "applied Prospectively." (See Appendix A for complete Appellate decision.)

CLAIM & DELIVERY PROCEDURE REQUIREMENTS OF BOTH CODE SECTIONS C.C.P. 509 AND 510

Former C.C.P. 509 is as follows:

509. CLAIM FOR DELIVERY: time.

DELIVERY OF PERSONAL PROPERTY, WHEN IT MAY BE CLAIMED. The plaintiff in an action to recover the possession of personal property may, at the time of issuing the summons, or at any time before answer, claim the delivery of such property to him as provided in this Chapter (Enacted in 1872).

Former C.C.P. 510 is as follows:

510. AFFIDAVIT—CONTENTS.

AFFIDAVIT AND ITS REQUISITES. Where a delivery is claimed, an affidavit must be made by the plaintiff, or by someone in his behalf, showing:

1. That the plaintiff is the owner of the property claimed (particularly describing it), or is entitled to the possession thereof;

2. That the property is wrongfully detained by the defendant;

3. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

4. That it has not been taken for a tax, assessment, or fine, pursuant to a statute; or seized, under an execution or an attachment against the

property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure;

5. The actual value of the property. (Enacted 1872.)

Appendix B is Judgment requested by Respondent for Dismissal of their complaint prior to hearing of Complaint. Complaint contained Requisites & Verification as required by C.C.P. 510 of Claim & Delivery procedure.

C.C.P. 510 of the Claim & Delivery Act specified an AFFIDAVIT and its REQUISITES. Removal of complaint containing Affidavit voided the former Claim & Delivery Act thereby making the claim a NULLITY or inoperative. Therefore, respondent's claim to enforcement of Claim & Delivery act to be "prospectively applied" could only be operative in Claim & Delivery instances whereby the entire Claim & Delivery procedure had been completed.

Respondent is in possession of Petitioners' possessions without any verified claim and has thus violated their Constitutional Guarantees as follows:

1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Fourth Amendment).

2. No person shall be deprived of life, liberty, or property, without due process of law. (Fifth Amendment).

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3. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Fourteenth Amendment).

4. The validity of a judgment may be affected by a failure to give the constitutionally required due notice and opportunity to be heard. (*Hanson v. Denckla,* 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228; *Savariego v. Maverick,* 124 U.S. 261, 31 L.Ed 430, 8 S.Ct. 461).

CONCLUSION

Respondent's dismissal of their complaint invalidated the requirements of C.C.P. 510 of the Claim & Delivery procedure—under the heading "Affidavit and Its Requisites: Where a delivery is claimed, an *affidavit must be made by the plaintiff.*" (See full account above of C.C.P. 510). *This is a major Intervening Act* (e.g., *Sanitary Refrigerator Co. v. Winters,* 280 U.S. 30, 34, footnote 1; *Massey v. United States,* 291 U.S. 608) *of sufficient weight as to prevent the application of this Claim & Delivery request to be applied PROSPECTIVELY.* (See Appendix A). All of previous decisions under former Claim & Delivery cases contained all of the requirements of C.C.P. sections 509 and 510—of the Claim & Delivery procedure.

For the above reasons Petitioners pray that their request for a Petition for Rehearing on Petition for Writ of Certiorari be considered.

Dated, Oakland, California,
May 21, 1976.

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
Petitioners in Propria Persona.

PETITIONERS' CERTIFICATE

Petitioners William E. Crawford and Frances B. Crawford, his wife, state that this Petition for Rehearing on Petition of Certiorari is presented in good faith and not for delay, and also certify that the petition is restricted to the grounds above specified.

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
Petitioners.

(Appendices Follow)

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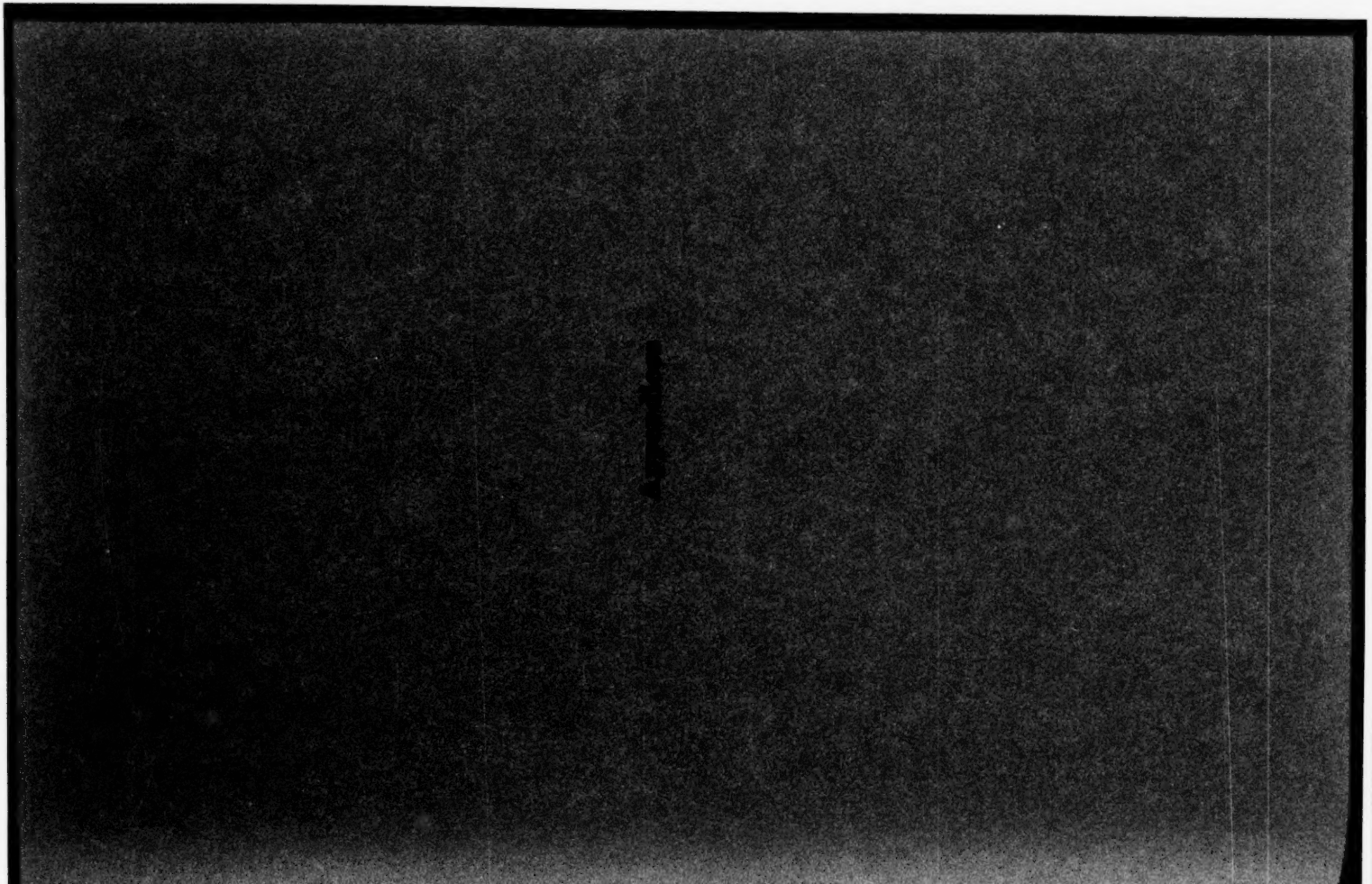

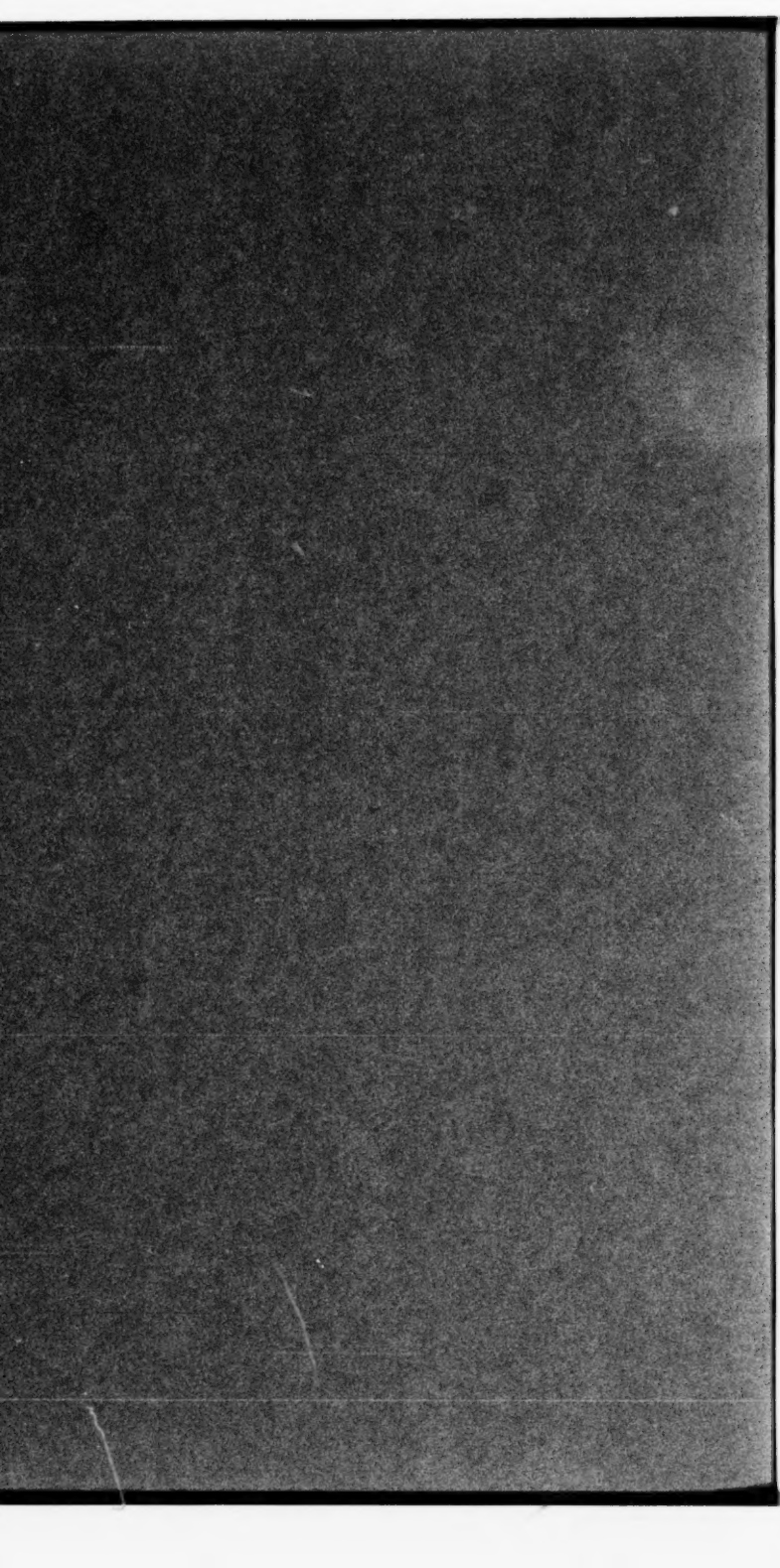

Appendix A

(NOT TO BE PUBLISHED IN OFFICIAL REPORTS)

In the Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 35893
(Sup. Ct. No. 376 939)

Security National Bank,
a corporation,
Plaintiff and Respondent,
vs.
William E. Crawford and
Frances B. Crawford,
Defendants and Appellants.

[Filed Nov. 17, 1975]

THE COURT:*

This is an appeal from a judgment of dismissal of plaintiff and respondent's remaining issues in his complaint in claim and delivery and defendants and appellants' cross-complaints and counterclaims. The sole issue before us on appeal is whether the decision in Blair v. Pitchess (1971) 5 Cal.3d 258, should be applied retroactively to void an execution of claim and delivery process in 1968.

The relevant facts may be briefly stated. Appellants and respondent's assignor, Abbey Rents, en-

*Before Taylor, P.J., Kane, J., and Rouse, J.

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tered into a conditional sales contract in June 1965 for the purchase of numerous items of equipment to be used in appellants' convalescent hospital. Following appellants' default, respondent instituted claim and delivery proceedings in February 1968 and repossessed the property. On July 1, 1971, the California Supreme Court declared unconstitutional the claim and delivery law (Code Civ. Proc., §§ 509-521) in Blair v. Pitchess, supra.

Appellants' contention was made to this court in EAC Credit Corp. v. Bass (1971) 21 Cal.App.3d 645, where a claim and delivery, executed in April 1969, was urged to be retroactively void under *Blair,* supra. We stated, at page 655: "*Blair v. Pitchess, supra,* was not retroactive and is to be applied prospectively.

"It enjoined the prospective application of the claim and delivery procedure [citation] in effect since 1872. [Citations.]"

Appellants' additional contention that the enactment of interim claim and delivery legislation in 1972 (Code Civ. Proc., §§ 509-521 [West Supp. 1974]) operates retroactively also fails. Our review of this legislation, as well as of the subsequent provisions (Code Civ. Proc., §§ 511.010-516.050 [effective July 1, 1974]) does not reveal a legislative intent that these provisions should apply retroactively. It is well settled that unless the Legislature clearly intends that legislation is to be given retroactive effect, it will be construed to apply prospectively (In re Rauer's Collection Co. (1948) 87 Cal.App.2d 248, 253).

Judgment affirmed.

Appendix B

Charles L. Hemmings
Cox, Cummins & Lamphere
A Professional Corporation
Court and Mellus Streets
Martinez, CA 94553
Telephone: (415) 228-7300
Attorneys for Plaintiff

Superior Court of California, County of Alameda

No. 376,939

Security National Bank,
a corporation,
Plaintiff,

vs.

William E. Crawford,
Frances B. Crawford,
Defendants.

[Filed June 10, 1974]

JUDGMENT

This matter appeared on the calendar of the Presiding Judge, June 5, 1974 having been set as the time for trial of the above-entitled action.

Charles L. Hemmings of Cox, Cummins & Lamphere, A Professional Corporation, appeared for plaintiff, Security National Bank. Defendant William E. Crawford, in propria persona, appeared for him-

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self and defendant Frances B. Crawford was also present in the Courtroom.

Mr. Hemmings asked leave of Court to dismiss the remaining issues concerning money damages prayed for in plaintiff's Complaint and to file a Request for Dismissal. The Court granted the request and ordered plaintiff's Complaint dismissed.

It appears to the Court that plaintiff made a motion for judgment on the pleadings and the motion was granted by a judgment dated January 15, 1970 and signed and filed January 26, 1970. An appeal from the judgment was filed by the defendants. The Court of Appeal on May 24, 1971 in 1/Civil 28406 reversed the judgment on the pleadings and allowed defendants leave to amend their pleadings.

It further appears that in August, 1971, defendants filed an amended answer which included two separate counterclaims, along with a cross-complaint for abuse of process and a cross-complaint for unfair competitive business tactics.

It further appears that the plaintiff Security National Bank filed a demurrer to these cross-complaints and counterclaims. On November 9, 1971 a judgment of dismissal was signed and filed with respect to the counter-claims and cross-complaints above-referred to.

An appeal was taken from the judgment of dismissal and on December 13, 1972 the Court of Appeal in 1/Civil 31227 dismissed the appeal on the grounds that the complaint was still pending and therefore the judgment of dismissal dated November

9, 1971 was not a final judgment from which an appeal would lie.

The defendants made a motion to advance the case for trial, which was granted, and the trial date June 5, 1974 was set by the County Clerk.

In this posture of the action, the counter-claims and cross-complaints could not be tried. As a recital of the foregoing proceedings in this action, and good cause appearing,

It Is Ordered, Adjudged and Decreed:

1. The request of plaintiff Security National Bank that its complaint be dismissed as to the remaining issue of money damages is granted and plaintiff's complaint is ordered dismissed as to all remaining issues.

2. The judgment of dismissal filed November 9, 1971 as to the defendants' two counter-claims and two cross-complaints is and is adjudged to be the judgment of the Court.

Dated: June 5, 1974 and presented for signature and signed June 10, 1974.

/s/ Spurgeon Avakian
Spurgeon Avakian
Judge of the Superior Court